

Notice of Allowability	Application No.	Applicant(s)	
	09/702,160	HARROP, THOMAS C.	
	Examiner David E. England	Art Unit 2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. This communication is responsive to _____.
2. The allowed claim(s) is/are 1-4-12, 15-17, 22-32, 37-53 and 55-58.
3. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some*
 - c) None
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) hereto or 2) to Paper No./Mail Date _____.
 - (b) including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. Notice of References Cited (PTO-892)
2. Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. Notice of Informal Patent Application
6. Interview Summary (PTO-413);
Paper No./Mail Date _____
7. Examiner's Amendment/Comment
8. Examiner's Statement of Reasons for Allowance
9. Other _____


DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

IN THE CLAIMS

Please amend Claims 8 and 9 as follows:

8. (Currently Amended) The method of claim 1, wherein the step of polling resources includes gathering the real-time status information for anyone or more of: network status, disk status, database status, memory status, CPU status, and operating system status.
9. (Currently Amended) The method of claim 1, wherein the step of polling resources includes gathering the real-time status information by a plurality of distributed gateways that are communicatively coupled to a central management system.

Reasons for Allowance

1. The following is an examiner's statement of reasons for allowance: the closest prior art of record (Natarajan et al., U.S. Patent No. 6,765,864) does not teach nor suggest in detail "a

management system for managing one or more layers of a network, wherein said managing includes predicting network-wide performance problems that are to occur within one or more layers of the network and taking responsive actions in an attempt to prevent or timely respond to the predicted said network-wide performance problems, said management system comprising: at least one processor-based management server communicatively coupled to at least one polling gateway that is operable to poll at least one network element to gather real-time status information for said at least one network element, the at least one polling gateway including a plurality of distributed polling gateways that are each operable to poll particular ones of disparate said at least one network element, wherein the disparate said at least one network element include said at least one network element that communicate in different network protocols, and said at least one network element selected from: SNMP network elements, CMIP network elements, and network elements using TCP/IP protocol; the at least one processor-based management server including software code executing thereon, wherein said software code learns a condition for predicting said network-wide performance problem within one or more layers of the network from said gathered real-time status information to enable the processor-based management server to predict the occurrence of said network-wide performance problem within the network" and "polling resources of the network to gather real-time status information about the network; evaluating performance of the network by identifying network-wide patterns in the gathered real-time status information; and determining, based on the result of said step of evaluating and from at least one previously defined rule correlating disparate characteristics of the resources of the network, an action for preventing a future network-wide performance problem from occurring; wherein said disparate characteristics include those selected from: CPU

run queue capacity, CPU run queue blocks, CPU run queue waits, context switching, memory paging, swap allocation, disk writes, disk blocking, disk waiting, disk utilization, network inbound packets, network outbound packets, network errors, and network collisions" as taught by the Applicant (see Remarks and Amendment dated 02/05/2007, pages 2 – 15; Specification as of 05/10/2001, pages 24 – 32; and Drawings dated 06/03/2004, Figures 2, 4, 5A and 8 – 13, of Applicant's enabling portions of the specification and drawings).

2. Natarajan does not teach the system as described above. Natarajan teaches a portion of the network elements report operating information relating to network conditions to a centralized data store. The information which is reported to the data store is analyzed by a policy engine which includes a plurality of application specific plug- in policies for analyzing selected information from the data store and for computing updated control information based upon the analysis of the information. The updated control information is fed back to selected network elements to thereby affect operation of the selected elements. Additionally the adaptive, feedback-based network of the present invention may include a network quality monitoring system for evaluating performance characteristics or other aspects of the network based upon predetermined standards or criteria which is not as specific to what the Applicant teaches in their claims.

3. The dependent claims further limit the independent claims and are considered allowable on the same basis as the independent claim as well as for the further limitations set forth. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Claims 1, 4-12, 15-17, 22-32, 37-53 and 55-58 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David E. England whose telephone number is 571-272-3912. The examiner can normally be reached on Mon-Thur, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David E. England
Examiner
Art Unit 2143

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